

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

UNITED STATES OF AMERICA

v.

MARVIN EARL GAINES

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§

CRIMINAL NO. H-97-036-04

**ORDER**


The Court has before it a *pro se* motion filed by Defendant Marvin Earl Gaines seeking modification of his sentence of incarceration under 18 U.S.C. § 3582(c)(2) and the United States Sentencing Guidelines (“U.S.S.G.”) § 2D1.1(c)(2) as amended effective March 3, 2008, the Retroactivity of Crack Cocaine Amendment. *See* Doc. # 1608. The Court has carefully reviewed Defendant’s motion, the applicable law, the applicable U.S.S.G. provisions, and the facts and procedural posture of Defendant’s case. Defendant’s requested relief is denied.

Defendant pleaded guilty to Count 1 in this multi-defendant case and currently is serving a sentence of 240 months of imprisonment. Count 1 charged Defendant with conspiracy to possess with intent to distribute more than 50 grams of cocaine base in violation of 21 U.S.C. §§ 846, 841(a)(1) and (b)(1)(A). The Government filed a statutory enhancement pursuant to 21 U.S.C. § 851, which increased the statutory minimum term of imprisonment for Count 1 to 240 months.

At sentencing, the Court held Defendant accountable for at least 150 grams of cocaine base. Under the retroactive amendments to U.S.S.G. § 2D1.1, this quantity of cocaine base results in a base offense level of 32. Applying all the same adjustments as in the original sentencing, the total offense level becomes 29. Defendant's criminal history category remains III. The guideline imprisonment range is 108 to 135 months, but by law the Court cannot reduce Defendant's sentence. The statutory minimum imposed by the § 851 statutory enhancement prevents Defendant's sentence from being less than 240 months. It is therefore

**ORDERED** that Defendant Marvin Earl Gaines's Motion for reduction of sentence [Doc. # 1608] is **DENIED**.

**SIGNED** at Houston, Texas this 14th day of **October, 2008**.

  
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Nancy F. Atlas  
United States District Judge